

# **IMPLEMENTATION OF UNIFORM CIVIL CODE BY STATES IN INDIA**

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## **ABSTRACT**

The implementation of a Uniform Civil Code (UCC) has been a long-standing issue in India. The UCC would provide a common set of laws governing personal matters such as marriage, divorce, inheritance, and adoption, for all citizens regardless of their religion. In this report, we examine the progress made by various states in India towards implementing a UCC. We analyze the legal and political challenges associated with implementing a UCC and provide a comprehensive overview of the current status of UCC implementation in each state and whether it impacts each state as an individual. People and researchers have long-standing doubts about the consequences of the application of UCC by a state government. Our report also discusses the potential benefits and drawbacks of implementing a UCC and provides recommendations for policymakers and stakeholders to help ensure a smooth and effective implementation of a UCC in India.

**Keywords:** Uniform Civil Code, Concurrent List, Personal Laws, State Government, Religion, Constitution

## **INTRODUCTION**

India is a secular country where the Constitution provides the right to freedom of religion. However, this has led to a complex legal system where different religious communities have their own set of laws governing personal matters such as marriage, divorce, inheritance, and adoption.

This has created disparities and inequalities in the legal system, where people belonging to different religions are subject to different laws. To address this issue, there has been a long-standing demand for a Uniform Civil Code (UCC) in India.

A UCC would provide a common set of laws for all citizens, irrespective of their religion. It would ensure equal rights and opportunities for all individuals and promote national integration. The implementation of a UCC has been a contentious issue in India for decades. While some argue that it is necessary to promote social and gender equality, others believe that it would violate the religious freedom of citizens.

The Indian Constitution under Article 44 directs the state to strive towards the implementation of a UCC. However, it is a matter of state jurisdiction, and the implementation of a UCC is dependent on the political will of individual states. In this report, we examine the progress made by various states in India towards implementing a UCC.

Finally, we provide recommendations for policymakers and stakeholders to help ensure a smooth and effective implementation of a UCC in India. We suggest measures to address the legal and political challenges associated with implementing a UCC and ways to promote awareness and understanding of the benefits of a UCC among citizens.

## **SCOPE OF RESEARCH**

The scope of the research is confined to the implementation of uniform civil code by states individually taking reference to the religious context and right to religious freedom in the country. The research is limited to states that implemented or are trying to implement uniform civil code with keeping into view the contentious debates of implementation of UCC in the state of Gujarat in the near future.

## **THE PROBLEM IDENTIFIED AND WHY THERE IS A CALL FOR RESEARCH?**

The issue of implementing a Uniform Civil Code (UCC) in India has been a contentious and complex issue for decades. The problem arises from the fact that India is a secular country with a diverse population comprising people from different religious and cultural backgrounds. Each religious community has its own set of personal laws governing matters such as marriage, divorce, inheritance, and adoption. As a result, there is a lack of uniformity in the legal system, and citizens belonging to different religions are subject to different laws. This has led to disparities and inequalities in the legal system and has been a cause of social and political unrest<sup>i</sup>.

With all these problems there is a lack of research in the right direction of the impacts of uniform civil code implemented by states individually and not but the whole country and the above problems lead to more major issues due to partial application on the country and consequences all the organs of the judiciary will face in the later part of the research.

## **HISTORY AND INSIGHT INTO UCC**

### ***What is a uniform civil code?***

Uniform Civil Code refers to a set of laws governing personal matters such as marriage, divorce, inheritance, adoption, and maintenance, which are applicable to all citizens of a country, irrespective of their religion, caste, or community. In essence, it aims to provide a common legal framework for all citizens, regardless of their religious or cultural backgrounds, to promote equality, justice, and social harmony<sup>ii</sup>.

### **Analysis of constitution assembly debates and member views**

The issue of personal laws was highly contested during the period of Indian independence, being debated in the Constituent Assembly for almost two years. The framers of the Constitution initially sought a Sovereign Democratic Republic based on principles of justice, liberty, equality and fraternity. When the Constitution came into effect in 1950, the right to

freedom of religion was among the fundamental rights granted under it and secularism was added to its Preamble in 1976<sup>iii</sup>.

**Mohammad Ismail** from Madras suggested that any group or community should not be obliged to give up its own personal law and argued that this is a fundamental right. He further described that personal laws were deeply rooted in religion and culture, so any interference would go against India's newfound secularism. He gave examples from other European countries with similar protective clauses for minorities. Mahboob Ali Beg noted that Article 33 did not include family law or inheritance matters but he suggested a proviso to make it clear that such matters are included under the civil code.

**M.A Ayyangar** commented on it being a matter of the contract as per Quran and Prophet tradition before K.M Munshi asserted that Article 35 does not impede religious freedom as India is a secular state where different communities have freedom of practice, even as organizations representing Hindus and Muslims have raised questions on Constituent Assembly's competence regarding personal laws. He then discussed similar moves taken by Muslim countries like Turkey or Egypt while European countries have uniform laws applied even to minorities – suggesting religion be detached from personal law.

**Dr B R Ambedkar** defended the right of the state to interfere with personal laws while giving some assurances to Muslim members, pointing out that this proposal only creates 'power' rather than 'obligation'. In his book "Annihilation of Caste," Ambedkar argued that the existence of personal laws based on religion was a major obstacle to the creation of a truly democratic and egalitarian society in India. He believed that a UCC would create a common set of laws for all citizens and would help to eliminate the divisions created by religious identities. Ambedkar also believed that personal laws were a major source of discrimination against women, particularly in matters of marriage, divorce, and inheritance. He argued that a UCC would provide equal rights and opportunities for women and would help to eliminate gender-based discrimination. In short, Ambedkar strongly advocated for a UCC as a means of achieving social and political equality in India, particularly for marginalized communities and women. Currently, different personal laws for different religious communities exist in India, which often results in unequal treatment of women.

**Sardar Vallabhbhai Patel** was a prominent leader during India's independence movement and later served as India's first Deputy Prime Minister and Home Minister. Patel was a strong advocate for a Uniform Civil Code, believing that it was essential for the country's unity and progress. During a debate in the Constituent Assembly in 1949, Patel argued that personal laws based on religion were a major obstacle to the creation of a unified nation. He believed that the government had a duty to bring about uniformity in laws governing marriage, inheritance, and succession, regardless of religion. In his own words, "I must confess that I do not understand the objections which are being raised from certain quarters to the principle of a uniform civil code. If we want to make a truly secular state we must have a uniform civil code." Patel believed that a Uniform Civil Code would help to promote national unity, remove discriminatory practices against women, and ensure equal rights for all citizens

## **LEGAL ANALYSIS AND PAST CASE LAWS**

### ***Relation between articles 14 and 44 with respect to uniform civil code***

Article 14 of the Constitution guarantees equality before the law and equal protection of the law to all persons. It prohibits discrimination on the basis of religion, race, caste, sex, or place of birth. The implementation of a UCC would ensure that all citizens, irrespective of their religion, are subject to the same set of laws and that their rights and obligations are determined on an equal basis. Thus, the implementation of a UCC would promote the principles of equality and non-discrimination enshrined in Article 14 of the Constitution.

Article 44<sup>iv</sup> of the Constitution is a Directive Principle of State Policy that requires the state to endeavour to secure for all citizens a Uniform Civil Code throughout the territory of India. The provision is based on the idea that a UCC would help promote national integration and ensure gender justice by eliminating discrimination against women in personal laws. However, unlike Article 14<sup>5</sup>, Article 44 is not enforceable by courts, and the state has the discretion to implement it in a phased manner<sup>v</sup>.

The relationship between Article 14 and Article 44 is significant as the implementation of a UCC would help ensure equality and non-discrimination enshrined in Article 14 of the Constitution. The Supreme Court of India has also held that the implementation of a UCC

would be in furtherance of the fundamental rights enshrined in the Constitution and would promote the principles of secularism and gender justice.

In conclusion, Article 14 and Article 44 are closely related to the implementation of a UCC. The implementation of a UCC would promote the principles of equality and non-discrimination enshrined in Article 14 of the Constitution and would help achieve the objectives of Article 44 by promoting national integration and gender justice<sup>vi</sup>. However, the implementation of a UCC needs to be done in a careful and phased manner, taking into account the concerns of all stakeholders and ensuring that it promotes social harmony and national integration.

### ***Shah Bano case***

The Shah Bano case was a landmark case in India that raised important questions regarding the rights of Muslim women and their entitlement to maintenance after divorce. The case resulted in significant controversy and led to the passing of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which exempted Muslim women from the application of the secular law of maintenance under Section 125 of the Code of Criminal Procedure, 1973<sup>vii</sup>.

If a Uniform Civil Code (UCC) had been in force at the time of the Shah Bano case, the outcome of the case could have been different. Here are some possible scenarios:

1. **Uniform Application of Law:** If a UCC was in place, the secular law of maintenance under Section 125 of the Code of Criminal Procedure, 1973 would apply uniformly to all citizens, regardless of their religion.
  2. **Uniformity in Personal Laws:** A UCC would aim to unify personal laws across religions, including Muslim personal law. This could mean that the Muslim Women (Protection of Rights on Divorce) Act, 1986, which was enacted to address the concerns raised in the Shah Bano case, would be replaced by a uniform law.
  3. **Reduced Controversy:** The Shah Bano case was highly controversial and led to widespread protests and debates. A UCC could have helped to reduce controversy by providing a uniform legal framework that applies to all citizens regardless of their religion.
- Overall, if a UCC was in force at the time of the Shah Bano case, it could have led to a more uniform application of the law and reduced controversy, resulting in a different outcome for the case.

***Anwar Ali case*<sup>viii</sup>**

If a Uniform Civil Code (UCC) were in place at the time of the Anwar Ali case, it would have ensured that there is a common law of succession applicable to all citizens of India, regardless of their religion or community. In such a scenario, Anwar Ali would have benefited from a more equitable and non-discriminatory law governing succession to tenancy rights. The succession to tenancy rights of a Muslim tenant, under the West Bengal Premises Tenancy Act, was governed by the Muslim Personal Law, which provided for a different system of succession as compared to tenants of other religions. This was found to be discriminatory by the Supreme Court, and the act was struck down stating it as unconstitutional and removing it.

If a UCC were in place, it would have provided for a common law of succession that is applicable to all citizens, irrespective of their religion. This would have ensured that Anwar Ali, being a citizen of India, would have been subject to the same law of succession as any other citizen, and would not have been discriminated against on the basis of his religion.

Thus, the implementation of a UCC would ensure that all citizens of India are treated equally before the law, irrespective of their religion or community, and would promote national unity and integration.

Some other relevant cases

***Joseph Shine v. Union of India (2018):***

In this case, the Supreme Court struck down the provision of adultery as a criminal offence, stating that it violated the right to equality and dignity of women. The Court also observed that a UCC would help to promote gender justice and end discrimination against women.

These judgments highlight the importance of a UCC in promoting equality, justice, and harmony in society. They have called for the enactment of a UCC to ensure that all citizens are governed by the same set of laws, and to eliminate discrimination based on religion or community.

For example, the current Hindu Succession Act, 1956, which governs inheritance rights among Hindus, has been amended to give daughters the same rights as sons in inheriting ancestral property. However, there are no such provisions in Muslim personal law, where women's

inheritance rights may be restricted<sup>ix</sup>. A UCC could potentially address this inequality by providing a uniform set of inheritance laws that apply to all citizens, regardless of their religion.

## **IMPLICATION AND IMPLEMENTATION OF UNIFORM CIVIL CODE**

### ***Implementation***

The implementation of a Uniform Civil Code (UCC) in India requires a constitutional amendment, and the Parliament has the power to enact such amendments. However, the state assemblies also have the power to implement a Uniform Civil Code within their respective states. Furthermore, Article 254 of the Constitution of India allows the state assembly to enact laws that may be inconsistent with laws enacted by the Parliament on subjects listed in the Concurrent List if such laws are reserved for the President's consideration and receive his assent.

Here are the steps that could be followed for the implementation of a UCC in India:

1. **Constitutional Amendment:** The first step towards the implementation of a UCC would require amending the Indian Constitution to provide for a common set of laws governing personal matters. This would require a two-thirds majority in both houses of Parliament, followed by ratification by at least half of the state legislatures.
2. **Drafting a Uniform Civil Code:** Once the constitutional amendment is passed, a committee could be formed to draft a Uniform Civil Code that would be applicable to all citizens of India, irrespective of their religion.
3. **Consultation with stakeholders:** The committee could hold consultations with different stakeholders, including representatives of various religions, legal experts, and civil society organizations, to ensure that the UCC is fair and just to all citizens.
4. **Passage of the UCC Bill:** Once the Uniform Civil Code is drafted, it would need to be passed by both houses of Parliament before it becomes law.
5. **Implementation:** After the UCC is passed, the government would need to ensure that it is effectively implemented across the country. It is important to note that the



implementation of a UCC would require a broad-based political consensus and a willingness to engage in dialogue and compromise<sup>x</sup>.

## **THE PRIOR EXISTENCE OF UCC IN STATES**

### ***Uniform civil code in goa***

Goa is the only Indian state to have a UCC in the form of common family law. The Portuguese Civil Code, which is still in effect today, was introduced in Goa in the nineteenth century and was not replaced after its liberation and thus is still existing even after independence.

Features-

1. The Goa Uniform Civil Code is a progressive law that allows for equal division of income and property between husband and wife, as well as between children (regardless of gender of any child).
2. Every birth, marriage, and death must be legally recorded. There are several provisions for divorce.
3. Muslims who have registered their marriages in Goa are not permitted to practise polygamy or divorce through triple talaq.
4. During the course of a marriage, the couple holds all of the property and wealth owned or acquired by each spouse.
5. In the event of divorce, each spouse is entitled to half of the property, and in the event of death, the surviving member's ownership of the property is halved.
6. Parents cannot completely disinherit their children. At least half of their property must be left to their children. This inheritance must be distributed equally among the children.
7. However, the code has some shortcomings and is not strictly a uniform code. For example, Hindu men have the right to bigamy under certain conditions outlined in the Gentile Hindus of Goa Codes of Usages and Customs (if the wife fails to deliver a child by the age of 25, or if she fails to deliver a male child by the age of 30). Polygamy is illegal in other communities

## **IMPACT OF PROBABLE STATE (E.G GUJARAT) IMPLEMENTATION OF UCC**

### *Consequences of implementation*

The implementation of the Uniform Civil Code (UCC) in India is a highly debated and controversial topic. UCC refers to a set of laws that would apply to all citizens of India, regardless of their religion, and would replace the existing personal laws that vary according to religion<sup>xi</sup>.

If the UCC is implemented, it would have significant implications for the states in India. Some of the potential impacts are:

1. **Uniformity:** One of the key benefits of implementing UCC would be the establishment of a uniform set of laws across the country. In present scenerio, different communities are governed by their own personal laws, which can vary significantly in terms of marriage, divorce, inheritance, and other matters. UCC would ensure that same set of laws governs everyone, creating a more equal and just society.
2. **Resistance:** Some states may resist the implementation of UCC, particularly those where religious minorities make up a significant portion of the population. This could lead to tensions and conflicts between the central government and the state governments.
3. **Social changes:** The implementation of UCC would bring about significant social changes, particularly in relation to issues such as marriage, divorce, and inheritance. These changes could be met with resistance and opposition from some quarters.
4. **Gender equality:** UCC has the potential to bring about greater gender equality by providing women with equal rights and protections under the law, regardless of their religion<sup>xii</sup>.

Overall, the implementation of UCC would be a significant step towards creating a more equal and just society in India. However, it is likely to be a contentious and difficult process, and the impacts are likely to be felt differently across the various states and communities in the country.

### ***Benefits of UCC in Gujarat***

- **Inheritance:** The current personal laws based on religion in Gujarat often discriminate against women in matters of inheritance. A UCC would provide equal inheritance rights for all citizens, irrespective of their religion or gender, and eliminate gender-based discrimination in inheritance matters.
- **Adoption:** The current personal laws based on religion in Gujarat have different provisions for adoption, which can lead to confusion and legal disputes. A UCC would provide a uniform set of laws for adoption, which would simplify the adoption process and provide clarity to adoptive parents<sup>xiii</sup>.
- **Succession:** The current personal laws based on religion in Gujarat have different provisions for succession, which can lead to legal disputes and confusion. A UCC would provide a uniform set of laws for succession, which would simplify the process and provide clarity to heirs.

Overall, the implementation of a UCC in Gujarat would bring legal reforms in the areas of marriage, divorce, inheritance, adoption, and succession. It would provide equal rights and opportunities for all citizens, irrespective of their religion or gender, and promote gender equality in personal matters.

### ***Problems if one state implements UCC individually***

If one state in India were to implement a Uniform Civil Code (UCC) while another **state did not**, it would lead to some legal complexities and inconsistencies. Here are some potential implications of having different civil codes in different states:

- **Confusion and Legal Disputes:** In matters such as marriage, divorce, and inheritance that are currently governed by personal laws based on religion have different civil codes in different in different states leading to confusion and legal dispute.
- **Unequal Treatment:** Having different civil codes in different states could lead to unequal treatment of citizens based on their religion and geographic location. Citizens

in states that have implemented the UCC would be subject to a uniform set of laws, while citizens in other states would be subject to personal laws based on religion.

- **Political and Religious Opposition:** Implementing a UCC in one state could face opposition from political and religious groups that may feel that it is an infringement on their religious rights and cultural traditions<sup>xiv</sup>.
- **Impact on National Unity:** Having different civil codes in different states could impact the sense of national unity and cohesion in India. India is a diverse country with many religions and cultures, and a uniform set of laws for all citizens could help to promote a sense of unity and shared values.

Overall, having different civil codes in different states could lead to legal complexities, unequal treatment, political and religious opposition, and impact national unity. It would be ideal for the UCC to be implemented uniformly across all states in India to ensure equal treatment and promote national unity.

For eg, if a person inherits property in a state that has implemented the UCC, but the property is located in another state that has not implemented the UCC, the laws governing inheritance could be different in each state. This could lead to legal disputes and confusion over the rightful inheritance of the property.

### ***Some laws which will be benefited from UCC in Gujarat***

There have been several cases in Gujarat where a Uniform Civil Code (UCC) would have been beneficial in resolving legal disputes. Here are some examples:

1. **Inheritance laws:** In a case in 2019, the Gujarat High Court heard a dispute over the inheritance of property between two siblings. The brother argued that he was entitled to a greater share of the property under Muslim personal law, while the sister claimed equal rights under the Hindu Succession Act. If a UCC were in place, it would have provided a clear and uniform legal framework for inheritance, reducing confusion and legal disputes.
2. **Divorce laws:** In another case in 2019, the Gujarat High Court heard a dispute over the validity of a marriage between a Muslim man and a Hindu woman. The couple had married under Muslim personal law, but the wife had converted to Hinduism after the marriage. The husband argued that the marriage was invalid under Muslim law, while the wife claimed that

it was valid under Hindu law. If a UCC were in place, it would have provided a clear legal framework for such inter-religious marriages, reducing confusion and legal disputes.

3. Maintenance laws: In a case in 2018, the Gujarat High Court heard a dispute over the maintenance of a Muslim woman who had divorced her husband. The husband argued that he was not required to pay maintenance under Muslim personal law, while the woman claimed that she was entitled to it under the Hindu Adoption and Maintenance Act<sup>xv</sup>. If a UCC were in place, it would have provided a clear and uniform legal framework for maintenance, reducing confusion and legal disputes.

These cases illustrate the need for a Uniform Civil Code in Gujarat<sup>xvi</sup>, which could provide a clear and uniform legal framework for personal laws and help to reduce legal disputes.

## **REVIEWS AND OPINIONS OF LEGAL EXPERTS AND LAWYERS**

### *Sr. Harish Salve*

In a 2018 interview with The Indian Express, Salve stated that "a Uniform Civil Code is necessary for the idea of one nation, one people and one law." He argued that it is unfair for people to be subject to different laws based on their religion and that a UCC would help to ensure equal treatment for all citizens. Salve has also pointed out that many countries around the world have a uniform set of civil laws that apply to all citizens, irrespective of their religion or ethnicity. However, Salve has also acknowledged that implementing a UCC would require careful consideration and consultation with all stakeholders, including religious and community leaders. He has stated that any UCC should be drafted in a manner that respects the cultural and religious diversity of India while also ensuring equal treatment for all citizens. Overall, Harish Salve has expressed his support for a Uniform Civil Code in India as a means of promoting national unity, ensuring equal treatment for all citizens, and simplifying the legal system. However, he has also emphasized the need for careful consideration and consultation in drafting any such code to ensure that it respects India's cultural and religious diversity<sup>xvii</sup>.

### ***Justice Bhattacharya***

In 2016, Justice Bhattacharya spoke at an event in Ahmedabad where he expressed his support for a UCC. He argued that the UCC is necessary for ensuring equal rights for all citizens, regardless of their religion. He also stated that the implementation of a UCC would help to simplify the legal system by doing away with different sets of personal laws for different communities. However, Justice Bhattacharya also acknowledged that implementing a UCC would be a complex task and would require careful consideration of various factors, including the views of religious leaders and communities. Overall, Justice Bhattacharya's statements suggest that he supports the implementation of a UCC in Gujarat as a means of ensuring equal rights for all citizens and simplifying the legal system. However, he also emphasizes the need for careful consideration and consultation in the implementation process.

## **CONCLUSION & SUGGESTION FOR FUTURE RESEARCHERS**

### ***Conclusion***

In conclusion, the implementation of the Uniform Civil Code (UCC) in India is a complex and contentious issue that has been debated for many years. The UCC proposes a uniform set of laws that would apply to all citizens of India, regardless of their religion, and would replace the existing personal laws that vary according to religion. While UCC is seen as a way to bring about greater equality and justice in society, it is also considered by some as an infringement on religious freedom and personal beliefs<sup>xviii</sup>.

The implementation of UCC would also bring about significant social changes, particularly in relation to issues such as marriage, divorce, and inheritance. These changes could be met with resistance and opposition from some quarters. However, UCC has the potential to bring about greater gender equality by providing women with equal rights and protections under the law, regardless of their religion.

The implementation of UCC is a complex and challenging task that requires careful consideration of various legal, social, and cultural factors. It is important for policymakers to

take into account the diverse opinions and perspectives on this issue and to make a decision based on the best interests of the country as a whole<sup>20</sup>.

In conclusion, the implementation of UCC is an important step towards creating a more equal and just society in India. However, it is likely to be a contentious and difficult process, and the impacts are likely to be felt differently across the various states and communities in the country. It is crucial for policymakers to approach this issue with sensitivity and respect for the diverse perspectives and beliefs of all citizens. Ultimately, the goal should be to create a legal system that upholds the rights and dignity of every individual, regardless of their religion or community.

### ***Suggestion***

For future researchers interested in studying the implementation of the Uniform Civil Code (UCC) in India, there are several avenues for further research. One area of focus could be on the legal and constitutional challenges associated with the implementation of UCC, including issues related to religious freedom, personal laws, and minority rights. Another area of research could be on the social and cultural implications of UCC, including the potential impact on gender relations, family structures, and community identity. Overall, there is a need for further research on the implementation of UCC in India, given its potential to bring about significant social, cultural, and political changes. By conducting rigorous and comprehensive research, future scholars can contribute to a more informed and nuanced understanding of this important and highly debated issue.

## ENDNOTES

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